

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>COMMONWEALTH EDISON COMPANY</b>	<b>:</b>	
	<b>:</b>	
<b>Petition for approval of tariffs</b>	<b>:</b>	<b>No. 06-0411</b>
<b>Implementing ComEd's proposed</b>	<b>:</b>	
<b>residential rate stabilization program</b>	<b>:</b>	

**REPLY BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS  
IN OPPOSITION TO COMMONWEALTH EDISON'S  
RESIDENTIAL RATE STABILIZATION TARIFF**

**The People of the State of Illinois  
By LISA MADIGAN, Attorney General**

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**October 6, 2006**

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ILLINOIS COMMERCE COMMISSION**

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RESIDENTIAL RATE STABILIZATION TARIFF**

**The People of the State of Illinois ("the People"), by and through the Illinois Attorney General, Lisa Madigan, file this Reply Brief in Opposition to Commonwealth Edison's ("ComEd") Residential Rate Stabilization ("RRS") Tariff, pursuant to 83 Ill Admn. Code 200.800. The People respectfully request that the Illinois Commerce Commission ("ICC" or "Commission") deny ComEd's petition because: (a) the costs of the proposed RRS program are more than double the most optimistic estimates of program benefits; (b) ComEd has failed to file a tariff as required by Article IX of the Public Utilities Act; and (c) the RRS program violates the Illinois Supreme Court's holding in Business and Professional**

**People for the Public Interest, et al. v. Illinois Commerce Comm’n, 146 Ill. 2d 175, 585 N.E.2d 1032 (1990) (“BPI II”).**

**I. There is no factual or legal basis on which to base a finding of justness or reasonableness in this docket.**

**There is no factual or legal basis for a finding, as ComEd requests, that the RRS proposal is “just and reasonable.” ComEd Brief, at 3. ComEd has failed to present evidence showing that the costs of the program are reasonable or that requiring participants and/or nonparticipants to pay for such a program would be just. The Commission is also prohibited from making a “just and reasonable” finding in this docket because ComEd has not filed a tariff as required by PUA Article IX.**

**A. The Commission cannot make a “just and reasonable” finding because ComEd has failed to present evidence showing that the costs of the RRS program are reasonable or that it would be just to require ratepayers to pay for this program.**

**ComEd asserts, without citing any evidence, that “[e]ach of ComEd’s customers will benefit from this program.” ComEd Brief, at 2. The record in this case does not support that assertion. Indeed, the record in this docket makes clear that this program will cost ComEd customers at least \$18 million. See, People’s Initial Brief, at 6 – 11, *citing* ComEd Exs. 11.0, 2:53; 12.0, 3:52 – 53; 12.2, 4, 5: 98 – 104; AG Exs. 4.0 and 4.1.**

**The RRS program, evaluated on the basis of ComEd's estimates of costs and benefits, would require ratepayers to pay over \$29 million to fund a program that would, at best, produce only \$11 million in benefits. *Id.* This is well beyond the bounds of reasonableness. "The public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth." United Cities Gas Co. v. Illinois Commerce Com'n, 163 Ill.2d 1, (1994).**

**Requiring ratepayers to spend \$2.63 to provide a dollar's worth of benefit through the RRS program would also be unjust. This is true whether costs are recovered only from program participants or recovered from all residential customers. No one should be forced to bear the costs of a program where the ratio of benefits to costs is only 0.38:**

**. . . a just and reasonable rate can never exceed-perhaps can rarely equal-the value of the service to the consumer, and on the other hand it can never be made by compulsion of public authority so low as to amount to confiscation; that a just and reasonable rate must therefore certainly fall between these two extremes . . .**

**State Public Utilities Commission v. Springfield Gas & Elec. Co. 291 Ill. 209, 216, 125 N.E. 891, 895 (1920) *citing* Public Service Gas Co. v. Utility Com'rs, 84 N. J. Law, 463, 87 Atl. 651, L. R. A. 1918A, 421 (1913).**

**B. The Commission cannot make a “just and reasonable” finding in this docket because ComEd has not filed a tariff as required by PUA Article IX.**

**ComEd asserts that proposing tariffs by petition is authorized by 83 Ill. Adm. Code § 255.30(j). ComEd Brief, at 9. While that is true, it is beside the point. Neither PUA Article IX of the Commission’s rules authorize a finding of justness and reasonableness for a tariff that has not been formally filed with the Commission. ComEd has not actually filed a tariff in this case. See, “Report of Rate & Tariff Daily Filings” at: [http://www.icc.illinois.gov/rl/public\\_utilitypostings.aspx?ty=dailytf](http://www.icc.illinois.gov/rl/public_utilitypostings.aspx?ty=dailytf).**

**In the absence of a tariff filing, there is no authority – under Part 255 of the Commission’s rules or pursuant to PUA Article IX – for a finding of justness and reasonableness. PUA Section 9-201(c) states unequivocally that “[n]o rate or other charge . . . shall be found just and reasonable unless it is consistent with Sections of this Article [IX].” 220 ILCS 5/9-201(c). PUA Section 9-201(a) requires *all* proposed changes in rates to be formally filed as tariffs with the Commission, regardless of the length of the notice period:**

**. . . no change shall be made by any public utility in any rate or other charge or classification or service...except after 45 days notice to the Commission and to the public ... *notice shall be given by filing with the Commission* and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be**

made in the schedule or schedules then in force, and the time when the change or changes will go into effect . . . The Commission, for good cause shown, may allow changes without requiring the 45 days' notice herein provided for, by an order specifying the changes to be made and the time when they shall take effect and the manner in which they shall be filed and published.

220 ILCS 5/9-201(a) emphasis added. Since ComEd has not yet filed a tariff, there is no legal basis for a finding of justness and reasonableness in this docket.

II. CUB v. ICC did not modify the holding in BPI II prohibiting deferred recovery of operating expenses in a cases such as this, where test-year principles apply.

ComEd asserts that BPI II cannot be read to prohibit deferred recovery of operating expenses because the Supreme Court subsequently approved recovery, over a five year period, of coal tar cleanup expenditures at former sites of manufactured gas plants. ComEd Brief, at 9, citing Citizens Util. Bd. V. Ill. Commerce Comm'n, 166 Ill.2d 111, 651 N.E.2d 1089 (1995)(“CUB v ICC”). This is incorrect. CUB v. ICC was a case about amortized costs recovered over a five year period in which the Court specifically held that test-year rules *did not* apply. CUB v. ICC, 166 Ill.2d at 121 – 125 and 139 – 140. In contrast, BPI II was a case in which deferred recovery of operating expenses was prohibited because the court held that test-year rules *did* apply. BPI II, at 139 – 140.

**The instant case is a case in which test-year principles apply. See, People’s Initial Brief, 16 - 17 FN 8. Consequently, BPI II prohibits deferred recovery of new operating expenses such as RRS implementation and carrying cost. “The test-year rules are intended to prevent a utility from mismatching revenue and operating expense data.” BPI II, 146 Ill.2d at 242.**

**III. The Commission has no authority to issue advisory rulings or to pre-approve recovery of costs in a future rate case.**

**After first asking the Commission to find the RRS proposal “just and reasonable” (ComEd Brief, at 3 -4), ComEd attempts to hedge its position by also asking the Commission to “approve” the program based on lesser standards. Specifically, ComEd asks the Commission to “affirm that ComEd should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS Program.” ComEd Brief, at 5. In addition, ComEd states that the company “is simply seeking a ruling that incurring such costs is appropriate.” *Id.***

**The Commission should reject ComEd’s invitation to “affirm that ComEd should recover in a future rate case its prudent and reasonable costs of offering and maintaining the RRS Program.” At best, this is a request to “affirm” that cost recovery in future rate cases will, as always, be governed by the standards set forth in PUA Article IX. At worst, ComEd’s**

**request for an affirmation that “ComEd *should* recover . . .” is an attempt to obtain pre-approval, or at least the appearance of pre-approval, of the cost recovery for the RRS Program. If the first of these interpretations is correct, Commission action is unnecessary; if the second interpretation is correct, Commission action would be unlawful.**

**ComEd’s request for a ruling that it is “appropriate” to incur RRS program costs should likewise be rejected, for at least three reasons. First, ComEd does not cite any legal basis for the use of an “appropriateness” standard. Second, the Commission has no authority to issue advisory rulings or to pre-approve the appropriateness of costs for recovery in a future rate case.**

**Above all, the Commission should send an unambiguous message that it is *not* appropriate for an Illinois utility to represent (before the Commission, in bill inserts, through mass media or elsewhere) that a program is “designed to help” customers when the program is actually designed so that the utility collects \$2.63 in revenue for every dollar of benefit that the utility expects to provide to customers. The Commission should also send a clear message that it is not appropriate for a regulated utility to cloak proposals that operate to the detriment of customers in warm and fuzzy acronyms. See, e.g., ComEd Brief, at 1, describing**



**ComEd's "Customers' Affordable Reliable Energy ("CARE") initiative.**

**In sum, the Commission should make clear that it is not appropriate for regulated utilities to engage in *any* activities that are inconsistent with their obligation to serve their customers.**

## **CONCLUSION**

**For the foregoing reasons, the People of the State of Illinois respectfully request that the Commission deny ComEd's Petition because:**

**(a) the costs of the RRS program are more than double the most optimistic**

**estimates of program benefits; and (b) ComEd has failed to file a tariff as required by Article IX of the Public Utilities Act; and (c) the RRS program violates the Illinois Supreme Court's holding in BPI II.**

**Respectfully Submitted,  
The People of the State of Illinois**

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**October 6, 2006**

**STATE OF ILLINOIS  
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**COMMONWEALTH EDISON COMPANY :**

**Petition for approval of tariffs**

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**No. 06-0411**

**Implementing ComEd's proposed :  
residential rate stabilization program :**

**NOTICE OF FILING**

**PLEASE TAKE NOTICE that on October 6, 2006, the People of the State of Illinois filed a Reply Brief in Opposition to Commonwealth Edison's Residential Rate Stabilization Tariff in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.**

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**Susan Hedman  
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**CERTIFICATE OF SERVICE**

**I, Susan Hedman, hereby certify that the foregoing documents, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on October 6, 2006. Paper copies will be provided upon request.**

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